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MEMORANDUM FOR: See Distribution

FROM:

Legislation Division
Office of Legislative Liaison

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SUBJECT: H.R. 5164, the "Central Intelligence
Agency Information Act"

1. Attached for your information and review is a copy of the latest FOIA bill to be introduced in the House of Representatives. As most of you know, this bill is the result of lengthy hours of discussion and negotiation among staff of the House Permanent Select Committee on Intelligence (HPSCI) and representatives of the Agency and the ACLU. The sponsorship of the bill by the Chairman and Ranking Minority Member of the full HPSCI (Representatives Boland (D., MA) and Robinson (R., VA)) and by the Chairman and Ranking Minority Member of the Subcommittee on Legislation (Representatives Mazzoli (D., KY) and Whitehurst (R., VA)), indicates the strong bipartisan support for this legislation.

2. The full HPSCI is scheduled to meet 11 April to mark up the FOIA legislation, and we anticipate that H.R. 5164 will be voted unanimously out of the Committee. HPSCI staff are currently drafting a report to accompany H.R. 5164. The bill will then go to the House Government Operations Subcommittee on Government Information, Justice and Agriculture, where a hearing is now scheduled for 26 April.

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Page Denied

98TH CONGRESS
2D SESSION

H. R. 5164

To amend the National Security Act of 1947 to regulate public disclosure of information held by the Central Intelligence Agency, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 15, 1984

Mr. MAZZOLI (for himself, Mr. BOLAND, Mr. ROBINSON, and Mr. WHITEHURST) introduced the following bill; which was referred jointly to the Permanent Select Committee on Intelligence and the Committee on Government Operations

A BILL

To amend the National Security Act of 1947 to regulate public disclosure of information held by the Central Intelligence Agency, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Central Intelligence
4 Agency Information Act".

5 SEC. 2. (a) The National Security Act of 1947 is
6 amended by adding at the end thereof the following new title:

1 "TITLE VII—PROTECTION OF OPERATIONAL
2 FILES OF THE CENTRAL INTELLIGENCE
3 AGENCY

4 "EXEMPTION OF CERTAIN OPERATIONAL FILES FROM
5 SEARCH, REVIEW, PUBLICATION, OR DISCLOSURE

6 "SEC. 701. (a) Operational files of the Central Intelli-
7 gence Agency may be exempted by the Director of Central
8 Intelligence from the provisions of the Freedom of Informa-
9 tion Act (5 U.S.C. 552) which require publication or disclo-
10 sure, or search or review in connection therewith.

11 "(b) For the purposes of this title the term 'operational
12 files' means—

13 "(1) files of the Directorate of Operations which
14 document the conduct of foreign intelligence or coun-
15 terintelligence operations or intelligence or security lia-
16 sion arrangements or information exchanges with for-
17 eign governments or their intelligence or security serv-
18 ices;

19 "(2) files of the Directorate for Science and Tech-
20 nology which document the means by which foreign in-
21 telligence or counterintelligence is collected through
22 scientific and technical systems; or

23 "(3) files of the Office of Security which document
24 investigations conducted to determine the suitability of

1 potential foreign intelligence or counterintelligence
2 sources;

3 except that files which are the sole repository of disseminated
4 intelligence are not operational files.

5 “(c) Notwithstanding subsection (a) of this section,
6 exempted operational files shall continue to be subject to
7 search and review for information concerning—

8 “(1) United States citizens or aliens lawfully ad-
9 mitted for permanent residence who have requested in-
10 formation on themselves pursuant to the provisions of
11 the Freedom of Information Act (5 U.S.C. 552) or the
12 Privacy Act of 1974 (5 U.S.C. 552a);

13 “(2) any special activity the existence of which is
14 not exempt from disclosure under the provisions of the
15 Freedom of Information Act (5 U.S.C. 552); or

16 “(3) the specific subject matter of an investigation
17 by the intelligence committees of the Congress, the In-
18 telligence Oversight Board, the Department of Justice,
19 the Office of General Counsel of the Central Intelli-
20 gence Agency, the Office of Inspector General of the
21 Central Intelligence Agency, or the Office of the Di-
22 rector of Central Intelligence for any impropriety, or
23 violation of law, Executive order, or Presidential direc-
24 tive, in the conduct of an intelligence activity.

1 “(d)(1) Nonoperational files which contain information
2 derived or disseminated from exempted operational files shall
3 be subject to search and review.

4 “(2) The inclusion of information from exempted oper-
5 ational files in nonoperational files shall not affect the exemp-
6 tion under subsection (a) of this section of the originating
7 operational files from search, review, publication, or disclo-
8 sure.

9 “(3) Records from exempted operational files which
10 have been disseminated to and referenced in nonoperational
11 files and which have been returned to exempted operational
12 files for sole retention shall be subject to search and review.

13 “(e) The provisions of subsection (a) of this section shall
14 not be superseded except by a provision of law which is en-
15 acted after the date of enactment of subsection (a), and which
16 specifically cites and repeals or modifies its provisions.

17 “(f) Whenever any person who has requested agency
18 records under the Freedom of Information Act (5 U.S.C.
19 552) alleges that the Central Intelligence Agency has im-
20 properly withheld records because of failure to comply with
21 any provision of this section, judicial review shall be available
22 under the terms set forth in subparagraph 552(a)(4)(B) of title
23 5, United States Code, except that—

24 “(1) information specifically authorized under cri-
25 teria established by an Executive order to be kept

1 secret in the interest of national defense or foreign re-
2 lations which is filed with, or produced for, the court
3 by the Agency shall be examined ex parte, in camera
4 by the court;

5 "(2) the court shall, to the fullest extent practica-
6 ble, determine issues of fact based on sworn ^{written} _A submis-
7 sions of the parties;

8 "(3) when a complain^{ant} alleges that requested
9 records were improperly withheld because of improper
10 placement solely in exempted operational files, the
11 complainant shall support such allegation with a sworn
12 written submission, based upon personal knowledge or
13 otherwise admissible evidence;

14 "(4)(A) when a complainant alleges that requested
15 records were improperly withheld because of improper
16 exemption of operational files, the Agency shall meet
17 its burden under subparagraph 552(a)(4)(B) of title 5,
18 United States Code, by demonstrating to the court by
19 affidavit that exempted files likely to contain respon-
20 sive records currently perform the functions set forth in
21 subsection (b) of this section; and

22 "(B) in making its determination under subpara-
23 graph (A) of this paragraph, the court may not order
24 the Agency to review the content of any operational
25 file or files unless the complainant disputes the Agen-

1 cy's showing with a sworn written submission based on
2 personal knowledge or otherwise admissible evidence;

3 "(5) in proceedings under paragraphs (3) and (4)
4 of this subsection the parties shall not obtain discovery
5 pursuant to rules 26 through 35 of the Federal Rules
6 of Civil Procedure, except that requests for admission
7 may be made pursuant to rules 26 and 36;

8 "(6) if the court finds under this subsection that
9 the Agency has improperly withheld requested records
10 because of failure to comply with any provision of this
11 section, the court shall order the Agency to search and
12 review the appropriate exempted operational file or
13 files for the requested records and make such records,
14 or portions thereof, available in accordance with the
15 provisions of the Freedom of Information Act (5
16 U.S.C. 552), and such order shall be the exclusive
17 remedy for failure to comply with this section; and

18 "(7) if at any time following the filing of a com-
19 plaint pursuant to this subsection the Agency agrees to
20 search the appropriate exempted operational file or
21 files for the requested records, the court shall dismiss
22 the claim based upon such complaint.

23 "DECENNIAL REVIEW OF EXEMPTED OPERATIONAL FILES

24 "SEC. 702. (a) Not less than once every ten years, the
25 Director of Central Intelligence shall review the exemptions

1 in force under subsection (a) of section 701 of this Act to
2 determine whether such exemptions may be removed from
3 any category of exempted files or any portion thereof.

4 “(b) The review required by subsection (a) of this section
5 shall include consideration of the historical value or other
6 public interest in the subject matter of the particular category
7 of files or portions thereof and the potential for declassifying
8 a significant part of the information contained therein.

9 “(c) A complainant who alleges that the Agency has
10 improperly withheld records because of failure to comply with
11 this section may seek judicial review in the district court of
12 the United States of the district in which any of the parties
13 reside, or in the District of Columbia. In such a proceeding,
14 the court's review shall be limited to determining (1) whether
15 the Agency has conducted the review required by subsection
16 (a) of this section within ten years of enactment of this Act or
17 within ten years after the last review, and (2) whether the
18 Agency, in fact, considered the criteria set forth in subsection
19 (b) of this section in conducting the required review.”

20 (b) The table of contents at the beginning of such Act is
21 amended by adding at the end thereof the following:

“TITLE VII—PROTECTION OF OPERATIONAL FILES OF THE
CENTRAL INTELLIGENCE AGENCY

“Sec. 701. Exemption of certain operational files from search, review, publication,
or disclosure.

“Sec. 702. Decennial review of exempted operational files.”.

1 SEC. 3. The Director of Central Intelligence, in consul-
2 tation with the Archivist of the United States, the Librarian
3 of Congress, and appropriate representatives of the historical
4 discipline selected by the Archivist, shall prepare and submit
5 by June 1, 1985, to the Permanent^{Select} Committee on Intelli-
6 gence of the House of Representatives and the Select Com-
7 mittee on Intelligence of the Senate a report on the feasibility
8 of conducting systematic review for declassification and re-
9 lease of Central Intelligence Agency information of historical
10 value.

11 SEC. 4. The amendments made by section 2 shall be
12 effective upon enactment of this Act and shall apply with
13 respect to any requests for records, whether or not such re-
14 quest was made prior to such enactment, and shall apply to
15 all civil actions not commenced prior to February 7, 1984.

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